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## EFFECT OF STATE REGULATION OF PUBLIC UTILITIES UPON MUNICIPAL HOME RULE

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That some form of public control must be exercised over the privately owned and operated utilities in cities is no longer an open question. It is now generally recognized that private corporations supplying such necessities of present day urban life, as gas, electric light and power, telephone service and street railway transportation, must be regulated by public authority in order to protect the people against poor and inadequate service and excessively high rates. The only question about which we have not yet been able to reach an agreement pertains to the choice of a regulating agency. Would adequate regulation be best secured by leaving the initiative in such matters in the hands of the local authorities directly interested, with such general and supervisory power in the state government as may be deemed necessary to protect all interests involved, or would it be better to take this power to regulate entirely out of the hands of cities and give to the state government exclusive control over such local utilities?

It is evident that the present tendency is strongly in the direction of exclusive state regulation. No other proposed reform in recent years has had so much influential support, or encountered so little opposition from the sources which usually offer more or less determined and effective resistance to every legislative proposal designed to increase popular control over corporations of this sort. But the fact that the corporations subject to regulation favor state as opposed to city control, is no evidence that this plan of dealing with the problem will benefit the public. If it has any significance, it doubtless means that the representatives of such interests expect less exacting treatment at the hands of the state than under a policy of local control.

The advocacy of exclusive state regulation is not confined, however, to the representatives of the public utility interests. Many who desire effective regulation believe that complete state control

offers the best solution of this difficult problem. This conviction is partly due to the belief that cities, as mere local governmental units, do not have and can not be expected to have, the powers needed for effective control, even when the principle of local self-government is fully recognized by the state. The ramifications of such corporations often extend, it is said, beyond the limits of a given city and therefore make the question of regulation more than a merely local one. That this is true in many cases must be admitted.

It is also claimed that municipal control over these matters has not been a conspicuous success. This contention may, however, be admitted without concurring in the belief that exclusive state control would be more advantageous than or even as advantageous as a policy under which cities exercise substantial powers of regulation. There are obvious reasons for the failure of local control in the past. In the first place municipal authorities have been too much restricted in the exercise of such powers. The failure of local regulation must to this extent be placed, where it properly belongs, upon the state government. The attitude of both state legislatures and courts has not been such as to give much encouragement to the hope that exclusive state control will be an entirely satisfactory solution.

Another reason for the failure of local regulation in the past has been the lack of what may be called municipal democracy. Cities have not had a form of local government adapted to local needs. Their organization for governmental purposes has been cumbersome and not directly responsive to local public opinion. For this situation also the state government is largely to blame. The people of American cities have had to make a long and often discouraging fight to secure from the state government permission to exercise powers needed for their protection and the right to adopt a type of local government suited to local needs.

It is an interesting coincidence that just at the time when cities are being reorganized in accordance with democratic principles, a nation-wide movement should be inaugurated to deprive them of all participation in the control of local public utilities. It is also significant that this movement, though ostensibly designed to give cities more effective protection against public utility abuses, has not had its origin in any popular demand from urban communities. The initiative in this matter seems to have come very largely from the public utility interests.

But whatever the facts may be as to the origin of this movement, it can hardly be denied that local participation in public utility control has not had sufficient trial, under conditions affording a fair test of its merits, to warrant the conclusion which is implied in the demand for exclusive state control. If experience is the criterion by which we should be guided in this matter, there is much that might be said against the policy of exclusive state control. Even with respect to matters that vitally concern the entire state, state regulation has not been always or even generally a conspicuous success.

Whether cities should have an active part in regulating local public utility corporations, or whether this power should be lodged wholly in the state government, is a question that should be decided in favor of that agency which seems most likely, in view of all the facts and forces involved, to guarantee adequate control. If it could be shown by the advocates of exclusive state control that a state commission is not only better able, but also as likely to exercise its powers to secure effective regulation in the interest of the local public, a strong point would be made in favor of state control. Nor could cities claim under any reasonable interpretation of the doctrine of local self-government the right to exercise a function that would be more efficiently exercised by the state.

It is not, however, merely a question of placing this function in the hands of that governmental agency which has most power and prestige behind it. For the power to exercise a particular function is of little consequence, unless there is an adequate guarantee that such power will be exercised in the interest of the local public for whose protection it is designed. Here is where we find the weak point in this new program of exclusive state control. A state appointed commission, theoretically responsible to the entire state, may be as satisfactory a device as it is possible to secure for the purpose of regulating utilities in which the entire state has a direct interest. But when such a commission is clothed with the power to regulate utilities that are purely local in character, this guarantee is in large measure lacking. A state commission, in exercising the power to regulate local utilities, can not be regarded as responsible to the state in the sense that it is responsible when exercising a power in which the whole state is directly and vitally interested. In the former case the commission is very largely in the position of an irresponsible authority. The community or communities directly affected by its acts lack the power

to control it. It is a well established principle of political science that to ensure an efficient exercise of a given power, it should be lodged in some governmental agency directly responsible to a constituency that would be benefited by having it enforced. It is for this reason that exclusive state control of local utilities fails to meet the requirements of democracy. In so far as it substitutes an irresponsible for a responsible control, it strikes at the foundation of that essential of democracy—local self-government.

Some of the arguments advanced in support of this policy of exclusive state control indicate an attitude of mind more or less unfriendly to municipal democracy. The suggestion that public utility corporations can not expect fair treatment at the hands of the local communities which they serve, is virtually an assertion that the basic principle of popular government is wrong. If the people of a local community are to be denied all power to regulate local public utility corporations merely because they would be benefited by effective regulation, it would also be true that the state as a whole should not be trusted with the power to regulate corporations in the control of which the people of the entire state are interested. The same line of argument would deny to the federal government the power to regulate railways and trusts. It is in reality a demand that the power to regulate, in so far as it applies to local public utilities, be placed beyond the control of the local public.

The question may properly be asked in reply to this suggestion whether the facts concerning local regulation support the contention that a local community, such as a city, can not be depended upon to deal justly with its public utility corporations. Indeed it may be said that if such power as local communities have had in this respect has been unwisely exercised, the mistakes have been those of leniency and undue concession of privileges rather than those of unjust and unreasonable regulation.

But even if local sentiment should insist upon unreasonable regulation, local public utility corporations would not be exposed to any real danger, inasmuch as there is always an appeal from this local authority to the courts. Just why so much emphasis is placed upon this alleged tendency on the part of a local regulating agency toward unjust treatment of such corporations is difficult to understand, in view of the fact that its acts are subject to review in the courts of the state. There is little evidence to support a belief that our state su-

preme courts are inclined to uphold acts of local authorities which have the effect of unjustly restricting the rights of public utility corporations. In view of all the circumstances, it is difficult to resist the conclusion that public utility corporations are opposed to the participation of the local public in the exercise of regulation, not because they fear injustice, but rather because they hope to secure through exclusive state control, advantages which it would be extremely difficult to obtain if the initiative in such matters remained with any authority which is responsible to local public opinion.

One fact which should be referred to in this connection is the disproportionately small representation in the legislature given to the large cities under some of the state constitutions. This is indicative of an attitude toward the city on the part of the state which has some bearing upon the question of state control. If a state government is really in the position of an irresponsible authority when it exercises a function that directly affects only the population of a single city, that irresponsibility is made more pronounced when by the constitution of the state the city is denied its proportionate share of representation in the state government.

It is not difficult to see why public utility corporations operating under franchises from cities should desire immunity from local regulation. The progress which has recently been made toward municipal democracy is an indication that such powers as municipal governments are allowed to have will be exercised more largely for the protection of the people than they have been in the past. The easy, indulgent attitude on the part of irresponsible municipal authorities, which heretofore has redounded so greatly to the advantage of public utility corporations, is giving place to a more solicitous regard for the interests of the municipal public. The period has now practically passed when corporations can secure from local authorities franchises without provisions safeguarding the rights of the public, or expect lax local regulation.

Having secured privileges under conditions such as these in the past, public utility corporations are now seeking to evade the consequences of democratic control. No general opposition on the part of these corporations to local participation was in evidence during the time that municipal government was amenable to corporate influence. It is only since the appearance of responsible municipal government that public utility interests have been so actively opposed to local

regulation. This may be regarded as merely one manifestation of that disapproval of local self-government, which has so often found expression in legislative acts and in court decisions. It is but natural that the present attitude of public utility corporations toward local regulation should reflect to some extent the old distrust of popular government. Efficient democratic organization necessarily means the strict regulation of such corporations. With the progress of democracy in city and state there is less opportunity than heretofore for the direct control of political agencies by corporate interests. From the point of view of those identified with the management of public utilities, popular government is a danger as real as class government was to the masses when the latter had little direct voice in public affairs. They are therefore as much interested in limiting effective popular control as the people were formerly in restricting control by a class. It is not easy to accomplish this, however, by an open and direct attack upon the principle of popular control.

As the sentiment in favor of democracy becomes more intelligent and active, the efforts to thwart democratic control must, in order to accomplish their purpose, employ means that are less obviously at variance with the predominant tendency of the time. It is for these reasons, in part at least, that so much impetus has been given to the movement to take the control of public utilities entirely out of the hands of cities. To establish a plausible justification for the policy, one which can be reconciled with the idea of democracy, an attempt is made to show that local participation in such control results in no real benefit to cities, that the greatest advantage to cities themselves lies in the direction of exclusive state regulation. But behind this argument, and only partially concealed from view, is the fear that municipal control will be too largely exercised from the view point of the local public and not sufficiently regardful of the interests of the corporations subject to its authority. To transfer a function which is properly a local one to the state government is to make the exercise of that power irresponsible and to defeat to that extent the purpose of government by the people.

Changes in economic conditions throw some light upon the origin of this movement for exclusive state control. If general prices had continued to decline as was the case throughout the period from 1873 to 1897 it is unlikely that franchise holding corporations would have been interested to the extent that they now are in securing immunity

from local regulation. Wherever a franchise fixes a maximum price which the company may charge, it has been treated as a contract under which the company has the right to charge up to that amount for service. During the period that general prices were declining, public utility corporations operating under franchises of this sort were in a peculiarly advantageous position as against the general public. The legal right to charge a fixed price, while prices in general were falling, was in effect the right to an increasing rate for service.

But when after 1897 the purchasing power of money began to decrease, this advantage disappeared. Such corporations were now confronted by increasing cost of operation along with a charge for service which was fixed in terms of money. One can easily see that, if prices should rise sufficiently, such corporations might find themselves in financial straits unless the effect of rising prices on cost of operation could be overcome by increase in the volume of business, or by more economical and efficient management. Of course it does not follow merely because the charge for service has been automatically reduced through the decrease in the purchasing power of money, that the price for service, as fixed in the franchise, is too low. It may still be higher than is sufficient with efficient management to ensure a reasonable return on the actual investment. It is true, however, that such companies have lost a very real advantage. The change in economic conditions has converted what was in effect a constantly increasing charge for service into one that is now decreasing. It is not surprising that corporations thus obligated to supply service on the basis of a fixed money charge should seek some means by which to avoid the consequences of rising prices. It is doubtless largely due to this desire to safeguard their interests that the representatives of public utility corporations are so actively pushing the movement for exclusive state control. They realize that cities may not easily be convinced that a franchise provision which protected the company against reduction in the price for service when all other prices were falling, should not also protect the public against an increase in the charge when all other prices are rising. If the franchise is in the nature of a contract, as has been held by the courts, then both parties are entitled to have it enforced for their protection. If a particular provision is enforced when it is advantageous to the company and disadvantageous to the public, the question naturally arises, why under changed conditions it should not also be enforced when it is advantageous to the public



and disadvantageous to the company. Any other view of the matter would jeopardize the rights of the local public. There is altogether too much tendency to regard a franchise as a contract only in so far as it protects the interests of the grantee. Indeed this seems to be one of the chief dangers of state control. The public utility corporations at the same time that they are seeking immunity from municipal regulation are claiming whatever legal rights and advantages they have secured from local franchise grants. There does not appear to be any indication that public utility interests now in favor of state control are willing to relinquish any of the advantages which are secured to them by having a franchise regarded as a contract; but while retaining these they hope to secure relief from such franchise provisions as have become burdensome.

It would doubtless be too much to expect that a responsible municipal government would take kindly to this view of the matter. It is more likely to act on the theory that, if the franchise binds the city, it also imposes a like obligation upon the company. For in no respect is local control more sensitive to local public opinion than when it concerns the question of advancing the price for a public utility service above the maximum fixed in the franchise. A change such as this, imposing as it would, an additional and obvious burden upon the public, could not secure popular approval, unless the people who are required to assume it were fully convinced of its justice.

The most serious objection to state control, from the point of view of municipal home rule, is the effect it may have upon publicly owned utilities. The efforts now being made, wherever public ownership exists, to bring municipally owned plants under state control, may be due only in part to public utility influence, but they are certainly in line with the political program of the public utility interests. Let the state determine the price to be charged for service by municipally owned plants, and private corporations will have less to fear from public ownership. This would be the most effective way of checking the increasing tendency to municipalize such industries.

It is now too soon after the inauguration of the movement for exclusive state control to permit any sweeping conclusion as to its results. These will depend upon the extent to which the urban communities within a state can make their influence felt in the state government and especially upon the attitude of the judiciary, state and federal, toward franchises and franchise legislation. Unless the courts

completely abandon the idea that a franchise is a contract, the new policy of exclusive state control is fraught with danger to the public. The power to authorize a local public utility corporation to increase the rate charged for service above the amount fixed in its franchise is one over which such corporations would have most influence when it is taken entirely out of the hands of the local government. And unless this power to raise rates is also accompanied by the power to reduce them below the maximum permitted by the franchise, cities have much to fear and little to gain from state control.

But even if exclusive state control of public utilities secured better and cheaper service, it would still be a questionable policy. An economic advantage such as this might be secured at too great a political sacrifice. The probable effect of state control upon the attitude of the people towards, and their interest in, municipal government, is of much more consequence than any possible material advantage. There is no problem in which the people of American cities are more actively and vitally interested than that of public utilities. To take from them all power to deal with this important local matter would necessarily weaken their interest in municipal politics. It is too much to expect an alert and active general interest in municipal government, unless it can be used to accomplish important local results. The failure on the part of the state to grant cities adequate powers of local self-government has been in no small degree responsible for the apathy and indifference of the public towards corruption and inefficiency.

The progress in recent years towards municipal democracy has made public ownership a more advantageous method of dealing with the public utility problem. With the extension of municipal activities in this direction, local government would acquire an importance which it has not had in the past. The effort now being made by private corporate interests to tie the hands of cities in relation to publicly owned utilities will, if it succeeds, be the most effective blow yet directed at the principle of municipal home rule.